

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HYPH (USA), INC. and XHAIL,  
INC.,

Plaintiffs,

v.

MICHAEL KIELY,

Defendant.

Civil Action No. 22-579-CFC

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**ORDER**

Pending before me is Defendant Michael Kiely's motion to set aside default and default judgment pursuant to Federal Rules of Civil Procedure 55(c) and 60(b).  
D.I. 26.

A decision to set aside default and default judgment is left to the discretion of the trial court. *United States v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984). Default judgments are generally disfavored, and doubtful cases should be resolved in favor of a party seeking to set aside the default judgment. *Id.* A court must consider three factors in exercising its discretion to grant or deny a motion to set aside a default judgment: (1) whether the plaintiff will be prejudiced; (2) whether the defendant has a meritorious defense; and (3) whether the default was the result of the defendant's culpable conduct. *Id.*

This is a contract dispute between Kiely and Plaintiffs HYPH (USA), Inc. and Xhail, Inc.—Kiely’s former employer. D.I. 1 ¶¶ 1, 16. Plaintiffs argue that they will be prejudiced if I set aside the judgment because Kiely’s financial situation has been in decline since Xhail terminated his employment in 2021. D.I. 33 at 5–7. Plaintiffs do not argue that their “ability to pursue the claim has been hindered since the entry of the default judgment.” *See Feliciano v. Reliant Tooling Co.*, 691 F.2d 653, 657 (3d Cir. 1982). And the risk that it may become more difficult for Plaintiffs to recover a judgment does not prejudice them to such a degree that I should decline to decide this case on the merits. *See id.* at 656–57 (listing examples of prejudice, e.g., loss of evidence or substantial reliance on the judgment).

NOW THEREFORE, at Wilmington on this Twenty-eighth day of August in 2023, **IT IS HEREBY ORDERED** that Defendant’s Motion to Set Aside Default and Default Judgment (D.I. 26) is **GRANTED**.



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CHIEF JUDGE